

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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RATE ADJUSTMENT DUE TO  
EXTRAORDINARY OR EXCEPTIONAL  
CIRCUMSTANCES

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Docket No. R2013-11

**COMMENTS OF THE SATURATION MAILERS COALITION;  
SMALL BUSINESS LEGISLATIVE COUNCIL; ASSOCIATION OF  
FREE COMMUNITY PAPERS; INDEPENDENT FREE PAPERS OF AMERICA;  
FREE COMMUNITY PAPERS OF FLORIDA, INC.; MIDWEST FREE COMMUNITY  
PAPERS ASSOCIATION; WISCONSIN COMMUNITY PAPERS; TEXAS  
COMMUNITY NEWSPAPER ASSOCIATION; FREE COMMUNITY PAPERS OF NEW  
YORK; MID-ATLANTIC COMMUNITY PAPERS ASSOCIATION; MINNESOTA  
FREE PAPERS ASSOCIATION; COMMUNITY PAPERS OF MICHIGAN;  
SOUTHEASTERN ADVERTISING PUBLISHERS ASSOCIATION; PACIFIC  
NORTHWEST ASSOCIATION OF WANT ADS NEWSPAPERS; AND  
COMMUNITY PAPERS OF NEW ENGLAND**

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(November 27, 2013)

STATEMENT OF INTEREST

The Saturation Mailers Coalition (SMC) is a coalition of saturation mailers that, collectively, send more than 100 million pieces of Saturation Mail with the USPS each week. SMC's members represent shared mail programs, free community papers, and letter and flat shaped coupon publications. The Small Business Legislative Council (SBLC) is an independent, permanent coalition of trade and professional associations who share a common concern for the future of small business. SBLC's mission is to consolidate the strength and influence of small business on legislative and federal policy issues of importance to the small business community and to disseminate information on the impact of public policy on small business. Postal rates, particularly postal rates for advertising mail, are an issue for small businesses that often are at a

competitive disadvantage in media choices when compared with larger business and competitors.

The Association of Free Community Papers (AFCP) and Independent Free Papers of America (IFPA) are national associations that represent free community papers, both with and without news content, that are sent by mail, private carrier delivery, or offered by demand distribution. Free Community Papers of Florida, Inc. (FCPF), Midwest Free Community Papers Association (MFCPA), Wisconsin Community Papers (WCP), Texas Community Newspaper Association (TCNA), Free Community Papers of New York (FCNY), Mid-Atlantic Community Papers Association (MACPA); Minnesota Free Papers Association (MFPA), Community Papers of Michigan (CPM), Southeastern Advertising Publishers Association (SAPA), Pacific Northwest Association of Want Ads Newspapers (PNAWAN), Community Papers of New England (CPNE) are state and regional associations of free papers.

All of the free paper associations represent free papers, some with all advertising content and some with traditional news coverage or local and neighborhood news. The free papers represented by SMC, and the named free paper associations, include approximately 1,714 ownership groups and 3,118 editions with a combined audited circulation of 64,587,533. More than 40% of the audited circulation of free papers circulation is sent by the USPS using ECR Saturation Mail. [March 2013, audit data of Circulation Verification Council.] The above are collectively referred to as the Saturation Mailers Coalition and Association Commenters (SMCAC).

### SUMMARY OF COMMENTS

SMCAC ask the Postal Regulatory Commission (PRC) to reject the exigency filing as not being in compliance with the provisions of the Postal Accountability and Enhancement Act (PAEA). Our reason for this request are as follows:

1. The Service's exigency request must be rejected because it is not a rate request seeking an increase "on an expedited basis due to either extraordinary or exceptional circumstances." The Postal Service has let too much time pass since the "Great Recession" of 2008-2009 to claim that this recent filing is an "exigency" request sought on an "expedited" basis "due to" the recession. Public statements made by the Chairman of the Postal Service Board of Governors, and the Postmaster General, show that this increase is "due to" the failure of Congress to pass postal reform. For those reasons, the exigent request must be rejected.

2. The Service's effort to impose an additional 4.3% across the board increase on all types of mail, regardless of cost coverage, contribution, or mark-up, is not good business judgment. It is contrary to "best practices of honest, efficient and economical management." No business facing emergency or extraordinary circumstances would increase all prices equally. Saturation Mail is highly price sensitive. An increase in prices above CPI will not produce more revenue for the USPS, but will drive out much of this high mark-up, high contribution business.

3. An increase in postal rates above the CPI for alleged "exigent" circumstances will have an adverse impact on America's small businesses. Small business advertisers, particularly local retailers and service providers, rely disproportionately on mailed print material, like the advertising they are able to buy in free community papers and coupon programs, to reach local customers. An exigent price increase, resulting in rate increases that are higher than the cost of living, will fall disproportionately hard on small business and local advertisers.

SMCAC acknowledge that the arguments made in paragraphs 2 and 3 above would not, alone, be sufficient to require the dismissal of a proper exigency rate request seeking a true exigent increase on an "expedited" basis "due to" some extraordinary or exceptional circumstances. But we think that such additional mailer and advertiser prospective will help the

Commission give the proper scrutiny to a Postal Service request that does not meet the plain language requirements of the PAEA exception allowing the Postal Service to bust the rate cap to respond, on an expedited basis, to exceptional and extraordinary circumstance.

# I

## THE 4.3%, ACROSS THE BOARD EXIGENCY RATE INCREASE SHOULD BE REJECTED BECAUSE IT IS NOT A RATE ADJUSTMENT SOUGHT ON AN EXPEDITED BASIS DUE TO EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES

SMCAC ask that Commission to give a plain, common sense reading to the PAEA provision that governs exigency rate adjustments. It provides "rates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances . . ." [emphasis supplied]. [Section 3622(d)(1)(E)] The Postal Service asserts this exigency request is in compliance with PAEA, and with prior rulings of the Commission and the Court of Appeals, because the Service has now "connected the dots" to show how this rate adjustment is somehow "due to" or "caused by" the revenue losses it suffered from the "Great Recession" of 2008-2009. In submitting all of these facts and figures, it appears the Postal Service is hoping that the PRC ignores the plain language of the statute, and the very plain context of the political and legislative circumstances leading up to the filing of this case.

This case was not filed "due to" the 2008-2009 recession. The exigency increase was filed because Congress has not passed comprehensive postal reform. The same structural problems that haunted the Postal Service in the last exigent filing, including lack of control over health care costs that require the Postal Service to contribute to Medicare, but deprive the Postal Service of those benefits, an aggressive pre-funding obligation for retiree health care, and continued funding obligations for pension costs that, by this Commission's study and OIG

analysis, have already been paid in full, and then some, are the problems that led the USPS to seek an exigent increase.

In public statements and press releases made by the USPS Board of Governors, Chairman Mickey Barnett and the Postmaster General about the threat of exigency filing and, in the subsequent exigency filing, the cause of the exigency filing was laid squarely on Congress for not passing comprehensive postal reform. It is not "due to" the 2008-2009 "Great Recession." It is due to the inability or unwillingness of Congress to agree and act.

A review of some of the postal press releases shows the real "due to" causal relationship for the exigency filing. These releases say NOTHING about the "Great Recession."

Chairman Barnett said:

"Of the options currently available to the Postal Service to align costs and revenue, increasing postage prices is the last resort that reflects extreme financial challenges . . . If these financial challenges were alleviated by the timely enactment of laws that close a \$20 billion budget gap, the Postal Service would reconsider its pricing strategy."

Other Postal Service leaders have been more plain spoken. The Postmaster General has had many public meetings, opportunities to testify, and meetings with customers and association executives. The PMG and Deputy PMG have made statements, and promises, that the passage of comprehensive postal reform would result in the Postal Service pulling or terminating its exigency filing. In the Postmaster General's testimony to the Senate Committee on Homeland Security and Government Affairs, and a press release dated September 26, 2013, the Postmaster General said "Yesterday the Postal Service announced a price increase above the rate of inflation. We did not want to take this step, but we had little choice due to our current financial condition. Resolving our health care issues will mitigate the pressure to raise prices . . ."

This filing was not "due to" the 2008-2009 recession. It was plainly due to inaction in Congress. Regrettably, SMCAC fear that giving the Postal Service what it wants will only give a

Congress, that has already demonstrated its great difficulty in agreeing on anything, more excuses to delay addressing the need for comprehensive, and meaningful postal reform. We support many of the Postal Service's legislative goals for reform that would allow the USPS to control health costs, would reduce and re-amortize its retiree health care funding obligations, and would recognize the magnitude of overpayments already made for pension benefits. SMCAC support giving the Postal Service more flexibility over its products, network, and services. But as long as the Postal Service has monopoly access to the mailbox, and monopoly control over many of its products, the price cap mechanism of PAEA, and the very narrow, and tightly drawn, requirements for allowing higher than CPI adjustments on an "expedited basis due to extraordinary or exceptional circumstances" should remain in place.

Not only must this case and rate adjustment be dismissed based on a plain reading of the "due to" requirement, and the public record of the reasons for the filing, the Commission should also scrutinize the case based on a requirement that any extraordinary or exceptional rate request be pursued in a diligent manner to get the additional rate increase on an "expedited" basis.

Many of the SMCAC member companies were shocked to hear that the USPS is seeking to get higher than CPI increase, today, and "blaming" the Great Recession of 2008-2009 for a 2014 price hike. No business gets to raise prices like this! SMCAC understand that the Postal Service never withdrew its earlier exigency case and the PRC never issued a final order dismissing or adjudicating the matter. But if the Service is given a limited safety valve under PAEA to seek higher than CPI rates on an "expedited" basis, doesn't this language mean something? How long is the Postal Service entitled to wait? It has already waited over 3 years. The Postal Service filing tries to persuade the PRC and mailers that it is somehow doing mailers a favor by not seeking all of the money it, arguably, lost due to the "Great Recession." Many

mailers and businesses, like many of SMC's members and free paper publishers, have chosen to invest in the mail, or build mail programs, believing that the risk of exigency was over and that the Postal Service would be a reliable provider with costs constrained, by law, to the CPI. It is submitted that this request is simply too late. If the circumstances and harm caused by the "Great Recession" were so severe that the Postal Service needed an extraordinary or exceptional price hike, it should have pursued that claim at the time.

SMCAC ask that the PRC find that this exigency filing does not meet the statutory requirements of being a rate adjustment diligently pursued on an "expedited" basis "due to" an extraordinary or exceptional circumstance.

## II

### THE 4.3% "ACROSS THE BOARD" INCREASE WILL DRIVE HIGH MARK UP, HIGH CONTRIBUTION AND PROFITABLE MAIL, LIKE SATURATION MAIL PROGRAMS, AWAY FROM THE USPS

As discussed above, SMCAC believe this filing is motivated more by politics than extraordinary or exceptional circumstances or "good business judgment." Assume, for a moment, that a business was battered by a severe recession and was struggling to survive. It desperately needs to raise money to pay its bills if it wants to stay in business. What would it do? A real business would take a look at its products, its profitable areas of business, and the areas of business that were presenting problems. One of the things it would do is to make tough decisions to adjust prices, or change product offerings, to make them more attractive to the market and thus improve its long-term survival as a business. After all, this is business, not politics - right?

An across the board increase may be political expedient, but it is not smart. It is not in the long-term best interests of the Postal Service.

SMCAC are not suggesting that the PRC try to re-allocate the revenue sought by the Postal Service and charge different rates to different products. That type of fighting over the pie and its associated dog eat dog rate setting processes was one of the things that PAEA and the CPI rate cap mechanism was wisely written to eliminate.

SMCAC would also like to make the point that a 4.3% increase for SMCAC mailers will not result in anywhere near a 4.3% increase in the postage that SMCAC mailers pay. Instead, it will lead more highly price sensitive, high contribution mailers to re-evaluate the Postal Service as a reliable provider and to step up their efforts to explore private carrier delivery distribution systems. They will cease being profitable customers and will become competitors of the USPS. As for the advertisers that now use these mail programs, it will drive them to other media.

The members of SMC and the free papers that mail, predominately send weekly advertising programs through Saturation Mail. Over 90% of these mailings are brought to the DDU where they bypass all internal postal processing and operations. The unit contribution for these products is approximately 9 cents and the mark-up (for ECR and saturation flats) is 216.8%. [USPS 2012 Compliance Filing.] We believe the disaggregated mark-up for saturation flats, excluding High Density, would be closer to 228%.

The types of products used by SMC include shared mail programs, free papers, coupon envelopes and magazines. Many of our members distribute all or portions of their programs with their own private carrier delivery systems. Some of our members also mail TMC products using ECR High Density or High Density Plus. These mailers can respond to postal rate increases by moving all or some of their distribution to private carrier, rack, or combined mailings or delivery with other products. For shared mail products, the average percentage of a mailers' gross revenues paid directly to the Postal Service for postage ranges from 40% to over 65%. Fifty



percent of all gross revenues going toward postage is average. For free paper publishers, the cost of postal distribution, as a percentage of all revenues, is frequently anywhere from 25% to 40%. The PRC and the USPS have recognized that these products are very price sensitive. When you look at the high percentage of gross revenues already paid to the USPS for postage, this is not hard to understand.

The free paper industry currently uses Saturation Mail for more than 40% of its circulation distribution. Free paper publishers and SMC representatives have been asking the Postal Service to examine its pricing for Saturation Mail. A reduction in the cost coverage, or a higher break point, could greatly expand the Postal Service's market share of these profitable products. The Postal Service's prior introduction of volume incentives for Saturation and High Density Mail, and the inclusion of an incentive in the Service's 2013 CPI filing, is an express acknowledgment that these weekly, predictable Saturation Mail programs are good business for the Postal Service.

SMCAC want to stress that these programs are already paying an unsustainably high percentage of their gross revenues to the Postal Service. Any increase above CPI will cause many of these profitable mailers to trim circulation, or re-examine other ways of distributing mail advertising, including setting up or expanding their own private carrier distribution to directly compete with the USPS.

SMC's members and the free papers that have chosen to mail require a distribution vehicle for large and small advertisers to reach consumers. By definition, Saturation Mail reaches everyone. When prices go up, the mailer cannot just trim its mailing list to adjust the ROI. Big advertisers and national concerns demand cost efficiency from all of their media suppliers. They are not experiencing anything extraordinary or exceptional in today's economy

or media buying marketplace. They will refuse to pay any higher than CPI advertising rates. (These large advertisers with big buying power and leverage frequently demand annual contracts and rates that are lower than CPI). SMCAC members, and the Postal Service, will be the losers when these big advertisers take their business somewhere else. The response of small to medium size advertisers are less a matter of market and buying power leverage than a lack of resources to pay higher prices. The small advertiser response and impact is discussed below.

Once again, we are not asking the PRC to approve a 4.3% increase for some, but give the high contribution, high mark up, price sensitive products, a "free pass." We submit, however, that the certain loss of business the Postal Service will suffer with this higher than CPI increase, at a time when there is not an external market-wide exigent or extraordinary event, or cause, driving other media competitors or providers to raise their prices, is a basis for finding that this across the board proposal seeking rates in excess of inflation is not a request that will help the USPS maintain postal services of the kind and quality adopted to the needs of the United States or one that is related to the best practices of honest, efficient, and economical management.

**THE EXIGENT INCREASE WILL DISPROPORTIONATELY HURT  
AMERICA'S SMALL BUSINESSES THAT RELY ON THE USPS**

The United States Postal Service is unique in its ability to reach all businesses and homes in America. In spite of the explosion of electronic communication, digital or social media, many of America's small businesses still rely on the Postal Service as a primary means of communication for prospecting, general advertising, driving retail and service consumer response, and helping local retailers and service providers get in business and stay in business.

A review of the pages of any free paper will show that the vast majority of advertisers served by these publications are local service businesses, professionals, and retailers. Since its formation in 1997, SMC has told Postal Service officials, and members of the PRC, what

happens to small business advertisers when postal rates rise. The typical small business response is to say "I do not have anymore dollars in my budget. Reduce the size of my ad or the frequency. I simply cannot pay more."

The CPI rate cap mechanism has proven an excellent method to help shared mailers and free papers work with customers to plan for, and adjust for or absorb, postal rate increases. During the period when the 2008-2009 recession was actually taking place, many SMC members and free paper publishers responded to the tough times by offering even lower rates and better deals to their advertising customers to help their struggling customers stay in business and keep their advertising dollars going into the mail. These products are price sensitive, in large part, because small business is very price sensitive.

Small businesses need a way to advertise. SMCAC submit this higher than CPI, "exigent" increase in postal rates will have a disproportionately adverse impact on America's small businesses - the businesses least able to pay or absorb higher than CPI rate increases.

The adverse impact of a higher than cost of living increase in postal rates can have a double "whammy" on small advertisers, and the shared mailers, coupon magazines, and free paper publishers that are submitting these comments. Let us give an example. A free paper in a small Florida town distributes to 50,000 homes offering four separate zones. One of these zones is in a low income area, where the paper just barely breaks even.<sup>1</sup> When the cost of distribution goes up, and a few advertisers pull out of the program, the paper is now operating at a substantial loss in that area. (It has higher costs and fewer advertisers willing to pay.) It may decide to shut down that zone. Let's count the "losers." Advertisers in that zone no longer have an affordable, locally targeted print alternative. The USPS has increased its rates by 4.3% but it has lost more

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<sup>1</sup> Papers in challenging zones may not be breaking even. The zone may be operating at a loss and supported by more profitable zones. The cost of postage in a light market could exceed 75% of the sales revenues for that zone.

then 4.3% of its business. In terms of total dollars, the Postal Service has lost perhaps 12,000 pieces of mail, with a mark up of nearly 230%, drop shipped in a predictable manner to the Postal Service each week. Meanwhile, the free paper is thinking twice about the Postal Service as a trustworthy distribution provider. The local retailers, restaurants, independent stores, professionals and service businesses that have used the paper to reach customers every week, may now struggle to find a cost-effective way to remind local consumers that their small businesses are still out there and have something to offer consumers that can compete with the mass merchandisers, franchise stores, and large concerns with the dollars and media buying power to reach consumers through television, radio, and other media.

Once again, we concede that the PRC would not properly reject a true exigent filing simply because it had an adverse impact on small business. But a true exigent filing would be occurring on an expedited basis, as a direct response to some extraordinary or exceptional circumstance. In these circumstances, all businesses, large and small, might be facing rising costs with all providers.

America's small businesses should not suffer because the Postal Service cannot get what it wants and needs from Congress. The emergency safety valve allowing for an exigency rate increase under PAEA should be strictly construed. It was not designed to give the Postal Service a piggy bank to respond to Congressional inaction and the Service's financial challenges.

### CONCLUSION

When the exigent increase was filed, the Postal Service Board of Governors Chairman issued a letter to postal customers. The Great Recession of 2008-2009 is not mentioned in that letter. Chairman Barnett writes "We value your perspective and share your concerns about the business and economic impacts of price increases. In an effort to balance these shared concerns

with the precarious financial condition of the United States Postal Service, and recognizing the uncertain path toward enactment of postal reform legislation, the Governors of the Postal Service voted to pursue a moderate increase in the price of postage."

The exigency filing is plainly "due to" the inability of the Postal Service to get what it wants and needs out of Congress. That is not a basis for an exigency, over the CPI, rate increase. An across the board increase will drive many of the Postal Service's most price sensitive, and high-contribution mailers and products to reduce their mail volumes and, potentially, leave the Postal Service altogether. It will not produce the revenues the postal experts claim it will. Furthermore, this exceptional, and extraordinary, price hike over the CPI rate of inflation will fall hardest on America's small businesses. Those that may rely on the Postal Service the most will be punished the most, by a price hike that was not contemplated, and is not permitted by the PAEA.

SMCAC respectfully request that the PRC reject the exigency filing as not meeting the plain language requirement of the statute.

Respectfully submitted,

/s/ \_\_\_\_\_  
 Donna E. Hanbery  
 As counsel for:  
 Saturation Mailers Coalition  
 Small Business Legislative Council  
 Association of Free Community Papers  
 Independent Free Papers of America  
 Free Community Papers of Florida, Inc.  
 Midwest Free Community Papers  
 Association  
 Wisconsin Community Papers  
 Texas Community Newspaper Association  
 Free Community Papers of New York  
 Mid-Atlantic Community Papers  
 Association

Minnesota Free Papers Association  
Community Papers of Michigan  
Southeastern Advertising Publishers  
Association  
Pacific Northwest Association of Want Ads  
Newspapers  
Community Papers of New England  
33 South Sixth Street, Suite 4160  
Minneapolis, MN 55402  
612-340-9855; Fax 612-340-9446  
hanbery@hnclaw.com

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